

Before the
Federal Communications Commission
Washington, D.C. 20554

HEARING DESIGNATION ORDER

Adopted: January 25, 1991; Released: February 11, 1991

By the Chief, Audio Services Division:

MM Docket No. 91-10✓

In re Applications of

(Charley Cecil &
Dianna Mae White
d/b/a) WHITE
BROADCASTING
PARTNERSHIP
(hereafter "White")

File No. BPH-891214MM

PEACHES
BROADCASTING,
LTD.
(hereafter "Peaches")

File No. BPH-891214MN

SAGE
BROADCASTING
CORPORATION
OF JUPITER,
FLORIDA
(hereafter "Sage")

File No. BPH-891214MR

FIRST COAST
BROADCASTING
COMPANY
(hereafter "Coast")

File No. BPH-891214MU

DOUGLAS JOHNSON
(hereafter "Johnson")

File No. BPH-891214MZ

NORTHEAST FLORIDA
BROADCASTING
CORP.
(hereafter "Northeast")

File No. BPH-891214NA

JEM
PRODUCTIONS,
LIMITED
PARTNERSHIP
C/O JOYCE MORGAN
(hereafter "JEM")

File No. BPH-891214ND

For Construction Permit
for a New FM Station on Channel 289A
in Baldwin, Florida

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Cross-Interest.* Charley Cecil White, a principal in White Broadcasting Partnership, states he is employed as the general manager of WJXR(FM), Macclenny, Florida. Cecil Whites's employment is in a managerial capacity and represents a potential violation of the Commission's cross-interest policy. See, e.g., *Martin Lake Broadcasting Company*, 21 FCC 2d 180, 181-182 (1970). Cecil White has indicated his intent to terminate his employment with WJXR (FM) in the event of grant of his application.

3. *Short-spacing.* Coast and JEM are short-spaced to the coordinates in a pending Rule Making (MM Docket 90-164) to upgrade FM Station WSOS's facilities to Channel 288C3. Accordingly, any construction permit awarded to either Coast or JEM shall be made contingent on the outcome of Commission Rule Making Docket MM 90-164.

4. Section II, Item 6 of FCC Form 301 (June, 1989) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Sage has not completed Item 6 correctly. Sage's application gives no specific street address for any of its principals. Accordingly, Sage must submit an amendment which gives all the information required by Section II, Item 6 to the presiding Administrative Law Judge after this Order is released.

5. *Air Hazard.* Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants, White, Peaches, Sage, Coast, Johnson and Northeast, have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by the applicants would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

6. Sage petitioned for leave to amend its application on October 4, 1990. The accompanying amendment was filed after April 20, 1990, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

7. Data submitted by the applicants indicate there would be significant difference in the size of the populations which would receive service from the proposals. Consequently, the populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by White, Peaches, Sage, Coast, Johnson and North-east would constitute a hazard to air navigation.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That, in the event of grant of White's application, Charley White will be ordered to divest himself of all interests in and sever all connections with Station WJXR(FM) prior to the commencement of program test authority.

11. IT IS FURTHER ORDERED, That any construction permit awarded to Coast or JEM as a result of this proceeding shall be made contingent on the outcome of MM Docket 90-164.

12. IT IS FURTHER ORDERED, That Sage shall submit an amendment which contains the information required by Section II, Item 6 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

13. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

14. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Sage IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

15. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Sect. 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau